

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PETE TRIFUNOVSKI,

Plaintiff,

v.

Civil Action No.
5:15-CV-0525 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

PETE TRIFUNOVSKI, *Pro se*
3362 Woods Road
Baldwinsville, NY 13027

FOR DEFENDANT

HON. RICHARD S. HARTUNIAN
United States Attorney
P.O. Box 7198
100 S. Clinton Street
Syracuse, NY 13261-7198

JEREMY A. LINDEN, ESQ.
Special Assistant U.S. Attorney

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on March 31, 2016, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

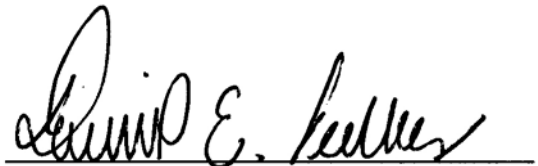
ORDERED, as follows:

1) Defendant's motion for judgment on the pleadings is
GRANTED.

2) The Commissioner's determination that the plaintiff's retirement insurance benefit had been calculated correctly, and thus plaintiff is not entitled to an increase in benefits under the Social Security Act, is
AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

4) The clerk is directed to forward a copy of this order to the plaintiff in accordance with this court's local rules.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: April 4, 2016
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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PETE TRIFUNOVSKI,

Plaintiff,

vs.

5:15-CV-525

CAROLYN W. COLVIN, Acting Commissioner
of Social Security,

Defendant.

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Transcript of a Decision held during a
Telephone Conference on March 31, 2016, at the
James Hanley Federal Building, 100 South Clinton
Street, Syracuse, New York, the HONORABLE DAVID E.
PEEBLES, United States Magistrate Judge, Presiding.

A P P E A R A N C E S

(By Telephone)

For Plaintiff: PETE TRIFUNOVSKI, Pro Se
3362 Woods Road
Baldwinsville, New York 13027

For Defendant: SOCIAL SECURITY ADMINISTRATION
Office of Regional General Counsel
Region II
26 Federal Plaza Room 3904
New York, New York 10278
BY: JEREMY A. LINDEN, ESQ.

*Jodi L. Hibbard, RPR, CSR, CRR
Official United States Court Reporter
100 South Clinton Street
Syracuse, New York 13261-7367
(315) 234-8547*

1 (The following is an excerpt from the
2 telephone conference held on 3/31/16.)
3 (In Chambers, Mr. Trifunovski and Mr. Linden
4 present via telephone.)

5 THE COURT: Okay. Well, you have asked me to
6 review a determination by the Commissioner. My role is
7 limited, I have to ensure that proper legal principles were
8 applied, and that the determination of the Commissioner is
9 supported by substantial evidence.

10 In this case, there really doesn't seem to be any
11 dispute about the underlying facts so the calculation --

12 MR. TRIFUNOVSKI: But I --

13 THE COURT: Please don't interrupt me, I'm -- this
14 is my decision. And if you disagree, you have a right to
15 appeal to the Court of Appeals.

16 The calculation began with average indexed monthly
17 earnings which the agency calculated at 2,055 which is
18 actually higher than the plaintiff calculated, his
19 calculation was 678 so that benefits the plaintiff, the
20 increase.

21 The first dispute is the first ben. point and it is
22 very clear under the regulations, RS 605.900 that the correct
23 first ben. point is \$749 because it is clear that
24 Mr. Trifunovski turned 62 in 2011, and if you multiply that
25 by .9, the first, the first element or component of the

1 benefit is \$674.10. The second ben. point is supplied by
2 multiplying the difference between, in this case 2,055 and
3 749, by .32. It is, the result is \$417.92 so there's a
4 benefit before adjustment for early retirement of 10 -- of
5 1,092.02 per month. The reduction is made for early
6 retirement, five-ninths of a percent for the first 36 months
7 prior to age 66, five-twelfths of 1 percent for the remaining
8 six months because he was 42 months shy of normal retirement
9 age. Rounding down from \$846.32 which is the figure I got,
10 the benefit monthly is \$846. It has since been adjusted for
11 cost of living increases and is now 876.70. I find that that
12 is pursuant to the regulations, it is supported by
13 substantial evidence. I will award judgment on the pleadings
14 to the defendant, I will confirm the Commissioner's
15 determination.

16 Mr. Trifunovski, you have a right to appeal. Your
17 notice of appeal should be filed within 30 days of the date
18 that judgment is entered on my decision, okay? Thank you.

19 MR. TRIFUNOVSKI: So your decision is this is
20 right, right?

21 THE COURT: Yes.

22 MR. TRIFUNOVSKI: What they giving to me, right?

23 THE COURT: Correct, yes.

24 MR. TRIFUNOVSKI: I think that's fraud, man, is
25 absolute fraud.

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THE COURT: Okay, thank you.

MR. TRIFUNOVSKI: Okay, bye.

(Proceedings Adjourned, 4:23 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal
Official Realtime Court Reporter, in and for the
United States District Court for the Northern
District of New York, DO HEREBY CERTIFY that
pursuant to Section 753, Title 28, United States
Code, that the foregoing is a true and correct
transcript of the stenographically reported
proceedings held in the above-entitled matter and
that the transcript page format is in conformance
with the regulations of the Judicial Conference of
the United States.

Dated this 4th day of April, 2016.

/S/ JODI L. HIBBARD
JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter